

**In the United States District Court  
for the District of Utah, Central Division**

DAVID M. McCrARY ESTATE &  
TRUST

Plaintiff,

v.

LOWES CORP., et. al.,

Defendants.

2007 NOV -5 P 3:50

DISTRICT OF UTAH

BY: DEPUTY CLERK  
ORDER

Case No. 2:07 CV 346 JTG

David M. McCrary filed a "Notice of Civil Class Action Complaint"<sup>1</sup> purportedly on behalf of the David M. McCrary Estate & Trust. Mr. McCrary is attempting to proceed pro se under the *in forma pauperis* statute, 28 U.S.C. § 1915, without prepayment of the filing fee. Although the magistrate judge previously granted McCrary's application to proceed *in forma pauperis*,<sup>2</sup> the magistrate judge, to whom this matter is referred under 28 U.S.C. § 636(b)(1)(B), now recommends that the application be denied and revoked as improvidently granted.

The Supreme Court has held that only natural persons qualify for *in forma pauperis* treatment under section 1915.<sup>3</sup> Therefore, artificial entities such as the estate and trust may not proceed under that section.<sup>4</sup> Similarly, artificial entities may appear in the federal courts only

<sup>1</sup> Docket no. 3, filed May 31, 2007.

<sup>2</sup> Docket No. 2, filed May 31, 2007.

<sup>3</sup> *Rowland v. California Men's Colony*, 506 U.S. 194 (1993).

<sup>4</sup> *Id.*

through licensed counsel.<sup>5</sup> Since there is no indication that Mr. McCrary is a licensed attorney, he may not represent the David M. McCrary Estate & Trust in this case.

The Plaintiff is not eligible to proceed pro se on behalf of the said Estate and Trust under the *in forma pauperis* statute. Mr. McCrary's application to proceed in any capacity without prepayment of fees<sup>6</sup> is **DENIED**. The Plaintiff must pay the entire \$350 statutory filing fee within thirty (30) days from the date of this Order, or this case shall be dismissed. Further, if plaintiff inntends to proceed in this case, he must be represented by licensed counsel. Accordingly, it is hereby **ORDERED** that Plaintiff must obtain counsel in order to proceed, and counsel must enter an appearance within thirty (30) days after the date of this Order.

DATED this 25<sup>th</sup> day of October, 2007.

  
J. THOMAS GREENE  
SENIOR UNITED STATES DISTRICT JUDGE

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<sup>5</sup> *Id.* at 201-02; *Tal v. Hogan*, 453 F.3d 1244, 1254 (10<sup>th</sup> Cir. 2006), *cert. denied*, 127 S. Ct. 1334 (2007); *see also C.E. Pope Equity Trust v. United States*, 818 F.2d 696 F.2d 696 (9<sup>th</sup> Cir. 1987)(holding that non-lawyer trustee could not represent trust); *Iannoccone v. Law*, 142 F.3d 553, 559 (2d Cir. 1998)(holding that non-attorney representative of estate may not proceed pro se in an action by the estate where estate has beneficiaries or creditors other than the representative); *Pridgen v. Andresen*, 113 F.3d 391, 393 (2d Cir. 1997)(same).

<sup>6</sup> Docket no. 1, filed May 31, 2007.